

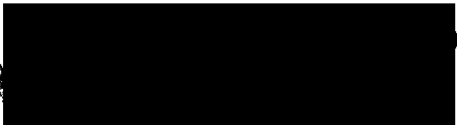


U.S. Department of Justice

Immigration and Naturalization Service



OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



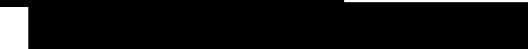
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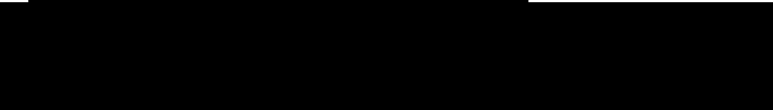
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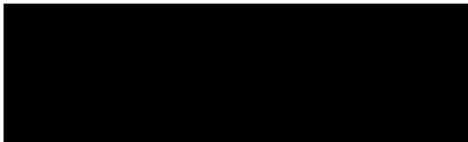
IN RE: Applicant:



APPLICATION:



IN BEHALF OF APPLICANT:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

Identifying information
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The application was denied by the District Director, Los Angeles, California, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on September 12, 1964 in Manila, Philippines. The applicant's father, [REDACTED], was born in the Philippines in 1927 and acquired U.S. citizenship at birth. The applicant's mother, [REDACTED], was born in 1940 in the Philippines and never claimed to be a United States citizen. The applicant's parents married each other in the Philippines on March 10, 1961. The applicant claims eligibility for a certificate of citizenship at birth under § 301(g) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1401(g).

The district director determined that, due to discrepancies in the record, the applicant failed to establish that he acquired United States citizenship at birth and denied the application accordingly.

On appeal, counsel states that the applicant established his eligibility, and the decision must be reversed. Counsel asserted that the minor discrepancies do not support the district director's conclusion. Counsel submitted additional documentation for review.

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired U.S. citizenship at birth abroad, resort must be had to the statute in effect at the time of birth. Section 301(g) of the Act was in effect at the time of the applicant's birth.


Section 301(g) of the Act provides, in pertinent part, that a person born outside the geographical limits of the United States and its outlying possessions of parents one of whom is an alien, and the other a citizen of the United States who, prior to the birth of such person, was physically present in the United States or its outlying possessions for a period or periods totaling not less than 10 years, at least 5 of which were after attaining the age 14 years, shall be nationals and citizens of the United States at birth.

The birth certificate of the applicant's father in the record shows that his father (the applicant's grandfather) is named [REDACTED] instead of [REDACTED] as contained on other documentation. A notation on the side reads: State Dept., Father's name, [REDACTED] That birth certificate lists the same mother and birth date of the applicant's father.

Although there may be discrepancies in the record, the applicant's father, [REDACTED] aka [REDACTED], was registered as a United States citizen at the U.S Embassy in Manila on December 10, 1979 and he was issued a United States passport on February 4, 1982 by that same U.S. Embassy. The record reflects that the applicant's father passed away in the Philippines on December 16, 1983 and this indication is supported by a death certificate. The applicant entered the United States as a nonimmigrant crewman in

1992 and filed the above application. There is no evidence in the record to show that he ever applied for a United States passport at the U.S. Embassy in the Philippines where he and his parents appear to have been residing prior to and after his father's death.

Although the discrepancies may have been explained in other proceedings when the Department of State issued the applicant's father a U.S. passport in 1982, the record is devoid of evidence which shows that the applicant's father was physically present in the United States for a period totaling not less than 10 years, at least 5 of which were after the age of 14. All documents in the record relating to the applicant's father have their origin in the Philippines.

The military service record in the file pertains to the applicant's grandfather,  and includes his military service dating back to 1919 which was prior to the birth of the applicant's father.

Absent such supportive evidence, the applicant has not shown that he acquired United States citizenship at birth because he has failed to establish that his father was physically present in the United States for the required period prior to the applicant's birth.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met this burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.